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August 30, 2005

**BY E-MAIL AND FEDEX**

Mr. George Kelhart  
Marketing Order Administration Branch  
Fruit and Vegetable Programs  
Agricultural Marketing Service, USDA  
1400 Independence Avenue SW  
STOP 0237  
Washington, DC 20250-0237

**Re: Request for Extension of Comment Period**  
Docket Number FV03-925-1PR  
Grapes Grown in a Designated Area of Southeastern California  
And Imported Table Grapes; Proposed Change in Regulatory Periods

Dear Mr. Kelhart:

On behalf of ASOEX, we respectfully request that the comment period for the above-referenced proposed rulemaking be extended for an additional period of sixty (60) days until November 28 because USDA has still not fully disclosed the record upon which it relied in proposing the above-captioned rule.

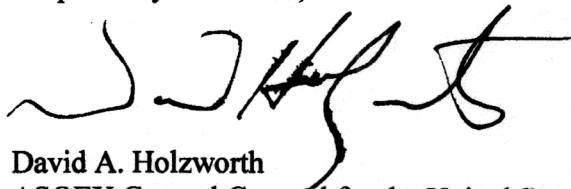
The proposed rule references substantial amounts of data as the basis for the proposed change in the beginning effective date for Marketing Order 925 and the companion Table Grape Import Regulation 4. On June 3, 2005, at the direction of USDA, ASOEX requested, under the Freedom of Information Act, a copy of all the material upon which USDA relied in proposing the rule. On July 6, 2005, USDA issued an interim response, indicating that they had "located documents responsive to our requests items 1, 2, 3, 6, 7, 8, 9, and 11." They indicated that there were no documents relating to items 4, 5, 10 or 12. On July 26, 2005, almost two months after the initial request, USDA made a partial production, which included responses to only items 1, 2, 3, 6, 7, 9 and 11. USDA withheld the previously located and identified documents responsive to #8 and "approximately 360 pages of vessel browser reports for the period 2000 to 2004 prepared by the California Desert Grape League based on data from Sermaco, Inc." USDA stated that it was in the process of obtaining and considering the views of the proprietary interest holder, and that ASOEX would receive a response concerning the vessel browser reports after consideration of any comments received from the reports' proprietary

interest holder. To date, USDA has not notified ASOEX of its final determination as to the disclosure of the vessel browser reports. On August 30, 2005, ASOEX formally appealed the agency's decision dated July 26, 2005.

The withheld information concerns voluntary USDA inspection data on Chilean imported table grapes. The above-captioned proposed rule placed a particular emphasis on the USDA inspection data as evidence of "circumvention" of grading standards by Chilean grapes. Therefore, it is imperative that the agency disclose all data relied upon by the agency in proposing the new rule, and that ASOEX and affiliated interests have an adequate opportunity to examine and comment on the data. If ASOEX and affiliated interests are deprived of an opportunity to participate in the rulemaking process in a meaningful manner, the proceeding will be rendered invalid. *See, e.g., United States Lines, Inc. v. Federal Maritime Comm'n*, 584 F.2d 519, 534 (D.C. Cir 1978) citing *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 393-94 (D.C.Cir. 1973) (Information in agency files or reports identified by the agency as relevant to the proceeding must be disclosed to the parties for adversarial comment.).

To date, USDA has not fully responded to ASOEX's FOIA request. USDA's response letter dated July 26, 2005 failed to provide a final determination on disclosure of the Sermaco-related data. USDA's letter also failed to provide reasons for denial and the name and title of the person responsible for denial of the request, contrary to the agency's own regulatory mandate. ASOEX has appealed the agency's July 26, 2005 response. ASOEX, therefore, respectfully request that the comment period for the above-referenced rulemaking be extended for another 60 days in the hope that USDA will comply with its obligation to make full disclosure of the record upon which it relied in issuing the proposed rule.

Respectfully submitted,



David A. Holzworth  
ASOEX General Counsel for the United States

cc: Delaware, New Jersey and Pennsylvania Congressional Delegations  
United States Trade Representative  
Director, Office of Management and Budget  
Maritime Exchange for the Delaware River and Bay  
Delaware River Port Authority  
Embassy of Chile